

# SOUTHERN ENVIRONMENTAL LAW CENTER

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March 18, 2015

***Via FOIAonline Electronic Submittal***

Regional Freedom of Information Officer  
U.S. Environmental Protection Agency, Region 4  
SNAFC Building, 61 Forsyth Street, S.W., 9<sup>th</sup> Floor  
Atlanta, GA 30303-8960

Miriam Pressley  
Information Access Section  
US-EPA-Atlanta Federal Center  
61 Forsyth St.  
Atlanta, GA 30303-8960  
404-562-8677  
[Pressley.miriam@epa.gov](mailto:Pressley.miriam@epa.gov)

Re: Freedom of Information Act Request Regarding Duke Energy Corporation, North Carolina- Supplement to request EPA-R4-2015-001054.

To Whom It May Concern:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Southern Environmental Law Center ("SELC") hereby requests, on behalf of MountainTrue (formerly Western North Carolina Alliance), access to the following documents or other public records. On October 30, 2014, SELC submitted an initial request for relevant documents produced by Duke Energy in response to EPA's August 25, 2014 Information Request. Our request was processed as "EPA-R4-2015-001054" by Miriam Pressley, Information Access Section EPA Region 4. In her final response to our FOIA request, Ms. Pressley indicated that additional records were received by EPA after the initial request was processed. This new FOIA request seeks to obtain those additional records. Per Ms. Pressley's instructions, please direct this request to her attention for ease of processing.

- All records received from Duke Energy in response to the July 31, 2014, EPA correspondence, "Information Request Pursuant to CWA Section 308," received after documents in response to request EPA-R4-2015-001054 were processed.
- EPA's August 25, 2014, Information Request to Duke Energy, and all records received from Duke Energy in response to that request, received after documents in response to request EPA-R4-2015-001054 were processed.

This request specifically includes all reports, studies, correspondence, memoranda, e-mails, analyses, meeting notes or other notes of any kind, drafts and working papers, and every other document, recorded communication, or record of any kind (including records which exist electronically). In addition, we request access to each version of a record or document, whether it is a draft, has been electronically deleted, has attachments, bears annotations, etc.

If you take the position that any of the above-described public records are not open to public inspection under the FOIA, please explain the basis for your position and identify any statute, rule of law, or other authority upon which you rely.

To reduce costs and expedite delivery, we prefer to arrange to review records in-person and provide our own scanner in order to copy records on-site and eliminate copy fees. We will provide a duplicate set of materials we scan on a CD upon request. We are also open to utilizing the "FOIAonline" reading rooms to access responsive documents. If the EPA prefers to send the public records, we request that information be delivered electronically, on CD or by email, to the extent possible.

If the agency believes a fee nonetheless may be incurred by providing access to or copies of the project file, on behalf of MountainTrue, we request a waiver of any fees associated with this request, pursuant to the FOIA fee waiver provision, § 552(a)(4)(A)(iii).

We request that any fees associated with this request be waived because disclosure of information in the requested records would be in the public interest. The FOIA provides that "[d]ocuments *shall* be furnished without any charge or at a charge reduced below the fees established ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii) (2006) (emphasis added). Congress' stated main purpose in amending the FOIA in 1986 was "to remove any roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under FOIA." 132 CONG REC. S16,496 (Oct. 15, 1986) (statement of Sen. Leahy). Congress intended the amendment to the FOIA's public interest provision "to be liberally construed in favor of waivers for noncommercial requesters." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *McClellan Ecological Seepage Situation v. Carlucci*, 853 F.2d 1282, 1284 (9<sup>th</sup> Cir. 1987) (both quoting 132 CONG. REC. S14,298 (Sept. 20 1986) (statement of Sen. Leahy)).

MountainTrue is a non-profit organization that engages citizens in various arenas of environmental protection including protecting water resources from contamination of surface and groundwater associated with coal ash treatment, storage and disposal. MountainTrue has years of experience in educating the public and sharing information regarding the dangers of coal ash, and has attended meetings, pursued advocacy for safe storage of coal ash, and generated numerous articles identifying environmental impacts from wet treatment and storage of coal ash in unlined lagoons. MountainTrue has obtained and reviewed prior public records, taken water quality samples, sent a CWA NOI related to unpermitted discharges, and is an intervenor in the North Carolina enforcement action brought against Duke Energy for unpermitted discharge from its coal ash lagoons. The MountainTrue staff members are interviewed by the media to explain their work and its significance, and they educate the public by speaking at conferences and other

public meetings. Disclosure of the requested records will make a significant contribution to the public understanding of Duke Energy's powerplants and discharges related to treatment and storage of coal ash. We understand the requested documents may not currently be in the public domain and have not yet informed the public discussion surrounding coal ash in North Carolina. In addition, MountainTrue will not benefit commercially from the disclosure of the requested records. The fee request for our initial FOIA request was granted, and we believe the waiver of fees for this supplemental request is equally justified.

If you have any questions, please do not hesitate to contact me. I am happy to work with you to clarify the scope of our request and to facilitate the production of the requested public records. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "DJ Gerken", written in a cursive style.

Austin DJ Gerken

Enclosure

Cc: *via email*

Matthew Hicks, Associate Regional Counsel, US EPA (hicks.matthew@epa.gov)

Michael Hom, Environmental Engineer, US EPA (hom.mike@epa.gov)